

Respondent and its insurance carrier seek review of the Administrative Law Judge's ruling on their Motion to Quash the depositions of Amy Prochaska and Sondra Mitchell. Claimant had issued a deposition subpoena duces tecum to each which instructed the deponents to bring with them certain records pertaining to the claimant. Respondent objected to both depositions, asserting as to each that "[t]his individual is not involved in claimant's workers compensation claim and has no information relevant to said claim."

At the hearing on the respondent's motions to quash the depositions, the Judge issued an Order which sustained the respondent's motions ". . . as to records not related to vocational rehabilitation efforts." Respondent's Request for Review followed.

It is difficult for the Appeals Board to determine exactly what it is the respondent is complaining about. No brief was submitted by respondent. At the motion hearing before the Administrative Law Judge respondent's counsel argued that the claimant's subpoenas to the two witnesses ". . . are not relevant or pertinent to the workers' compensation claim" (Transcript of Proceedings, October 5, 1995, p. 2). Mr. Haag objected to the claimant's document requests as being overbroad and vague. He further suggested that it was impossible to determine from the subpoenas duces tecum what records the claimant was seeking, in part because it was not limited on its face to records in the custody or control of the respondent and/or the witnesses. There follows in the transcript of the motion hearing a lengthy discussion by the Court and counsel as to exactly what it was claimant's counsel was seeking by his subpoenas duces tecum and what relevance those documents and records may have to the workers compensation claim. Mr. Snider indicated that in the past Boeing had employed an ergonomist whose deposition had been taken on respondent's behalf in another workers compensation case, and stated: "I am just attempting to obtain that same information about job analyses, what job tasks this claimant did while he was at Boeing, because it is all relevant as to what job tasks he can do and [can] no longer do." (Transcript, p. 6). He described an ergonomist as: ". . . a person that goes and looks at a job and actually sees what tasks are involved. Then looks at what the claimant's work restrictions are and says can this person do this task or not." (Transcript, p. 8). The other subpoenaed witness was employed as a vocational rehabilitation counselor who claimant, likewise, believed had information regarding claimant's ability to perform job tasks. These witnesses and the requested documents would, therefore, be relevant to the nature and extent of claimant's work disability.

The Administrative Law Judge stated that he was going to allow the deposition of the two witnesses only to the extent their testimony related to vocational rehabilitation efforts that took place. He was not going to order the witnesses to produce records that they had no control of. At page 16 of the hearing transcript the Court ruled as to Sondra Mitchell's deposition: "You can take her deposition for the limited purposes only as to what she might have done concerning his work tasks and his restrictions. But I am not going to allow you to get into all of this other stuff." To which Mr. Snider replied, "I think that is fair."

Beginning at page 16 and continuing on to page 17 the following colloquy appears:

"MR. HAAG: On Ms. Prochaska, Judge, she was the one that was actually asked to produce all medical records and accommodation review board and all that, so I am assuming that Your Honor, whatever the wording would be, sustained my motion to quash in so far as that is concerned, but you are saying that she should testify on anything she did pertaining to what we might call voc rehab for the claimant?

"THE COURT: Exactly.

"MR. HAAG: All right. Fair enough."

With that, the hearing was concluded. The Court issued its Order sustaining Respondent's Motion to Quash and this appeal followed. In what way the respondent considers itself aggrieved is something of a mystery. In any event, the Appeals Board finds that it does not have jurisdiction to review the Order and that this appeal should, therefore, be dismissed.

The Appeals Board's jurisdiction to review decisions rendered by an administrative law judge, which are interlocutory in nature and are not final, is limited. After examining K.S.A. 44-551, as amended by S.B. 59 (1995), and K.S.A. 44-534a, the Appeals Board finds that the subject Order of October 5, 1995, is not an order which can be reviewed by the Appeals Board pursuant to either statute. The decision of the Administrative Law Judge cannot be considered a preliminary hearing order pursuant to K.S.A. 44-534a. It is not an order whereby the Administrative Law Judge has exceeded his jurisdiction, nor does it give rise to one of the issues deemed jurisdictional by K.S.A. 44-534a, which gives the Appeals Board the right to review certain findings.

Although the Kansas Workers Compensation Act does not specifically address hearings on motions, it is certainly within the trial court's implicit authority to make rulings on matters involving evidentiary issues. An administrative law judge has the authority to administer his or her trial docket. Interlocutory appeals from such rulings are not contemplated by the statutes. The Appeals Board finds that it does not have jurisdiction to review this matter at this juncture of the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed. The Order of Administrative Law Judge John D. Clark dated October 5, 1995 remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael Snider, Wichita, Kansas
Frederick L. Haag, Wichita, Kansas
David Druten, Lenexa, Kansas
Cormac Johnston, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director